HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.8198 of 2005

Between:

Visakha Society for Prevention of Cruelty to Animal (Regd.,) represented by Founder/President, Pradeep Kumar Nath, Visakhapatnam … Petitioner

And

The State of Andhra Pradesh, Represented by the Chief Secretary, Hyderabad and another

… Respondents

:: ORDER::

Counsel for the Petitioner: Smt. C. Jayashree Sarathy

April 27, 2006

Per G.S. Singhvi, CJ

This is a petition for striking down a portion of sub-section (1) and Section 6 (2) of the Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 (for short 'the Act').

The petitioner is a registered society. It is engaged in the welfare and protection of animals and is recognized by the Animal Welfare Board of India. The grievance of the petitioner, as spelt out in the affidavit of its President Sri Pradeep Kumar Nath, is that despite the provisions contained in Articles 48 and 48-A read with Article 51-A, the State Government has not taken measures to prohibit the slaughter of animals other than cows and calves and buffalo calves. Sri Pradeep Kumar Nath has averred that even though Writ Petition No.12321 of 1990 filed by one **Sri Ramratan Jhawar**[1] for striking down the offending portion of Section 6 of the Act was dismissed by this Court on 19-4-2002 by relying on the judgment of the Supreme Court in **Mohd. Hanif Quareshi v. State of Bihar**[2], the same requires reconsideration in view of the judgment of the Larger Bench of Seven Judges in **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat**[3]. Sri Pradeep Kumar Nath has further averred that even though the State Government is proclaiming itself to be farmer friendly, no effective steps have been taken to ameliorate their conditions and unless effective policy is evolved, large sale of cows and buffaloes will continue resulting in violation of the philosophy enshrined in Article 48 of the Constitution.

We have heard Smt. C. Jayashree Sarathy, who vehemently argued that with the over-ruling of the Constitution Bench judgment in **Mohd. Hanif Quareshi v. State of Bihar** (supra), the State

Government is duty bound to make suitable amendments in Section 6 of the Act and impose a total ban on the slaughter of all milch cattles irrespective of their age. Mrs.Sarathy emphasized that preservation of animals is absolutely imperative for improving the economy of the rural parts of the State. She argued that the provision contained in Section 6 (1) authorizing slaughter of the animals is wholly abhorrent to the constitutional scheme and, therefore, the same is liable to be struck down.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. Sections 5, 6 and 7 of the Act, which have bearing on the decision of the issue raised by the petitioner read as under:

> "**5. Prohibition of slaughter or cow or calf of she buffalo:-**
> Notwithstanding anything in any other law for the time being in force or any custom, or usage to the contrary, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter or otherwise intentionally kill or offer or cause to be offered for killing any cow or calf, whether male or female, of a she buffalo.
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> **6. Prohibition against slaughter of animals without certificate from competent authority:-**
> (1) Notwithstanding anything in any other law for the time being in force or any custom or usage to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any animal other than a calf, whether male or female, of a she buffaloe, unless he has obtained in respect of such animal a certificate in writing from the competent authority appointed for the area that the animal is fit for slaughter.
> (2) No certificate shall be granted under sub section (1), if in the opinion of the competent authority the animal is or is likely to become economical for the purpose of,
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> (a) breeding, or
> (b) drought or any kind of agricultural operations; or

(c) giving milk or bearing off spring.

(3) A certificate under this section shall be granted in such form and on payment of such fee as may be prescribed.

7. Power of revision:-

(1) The Government may, suo motu or shall, on an application made in this behalf by the person aggrieved, for the purpose of satisfying themselves as to the legality or propriety of any order passed by a competent authority, granting or refusing to grant any certificate under Section 6, call for and examine the record of the case and may pass such order in reference thereto as they think fit.

(2) Subject to the provisions of sub section (1) any order passed by the competent authority granting or refusing to grant a certificate under Section 6, and any order passed by the Government under sub section (1) shall be final and shall not be called in question in any court.

A conjoint reading of the above reproduced provisions makes it clear that there is a total ban on the slaughter of any cow or calf, whether male or female of a she-buffalo. The non-obstante clause contained in Section 5 gives over-riding effect to the ban on the slaughter of any cow or calf. Section 6 (1) also begins with a non-obstante clause and contains a ban on the slaughter of any animal, whether male or female of a she-buffalo (other than a calf). However, the rigour of the non-obstante clause contained in this section is diluted by the latter part, which provides for slaughter of such animal in furtherance of a certificate given by a competent authority that the animal is fit for slaughter. Sub-section (2) specifies the conditions in which the competent authority can give certificate for slaughter of the animal. Section 7 confers power upon the government to either suo motu or on an application made in that behalf by the aggrieved person, revise an order made under Section 6 (1) granting or refusing to grant certificate.

In our opinion, the conditions specified in Section 6 (2) operate as a safeguard against arbitrary exercise of power by the competent authority to grant certificate for slaughter of an animal. This safeguard is further strengthened by the power of revision conferred upon the State Government. Therefore, on the face of it, Section 6 (1) and (2) cannot be dubbed as arbitrary or violative of any legal or constitutional provision. In

Sri Ramratan Jhawar's case (supra), the Division Bench considered the question whether permissive provision contained in the latter part of Section 6 of the Act, which facilitates slaughter of animals, after obtaining certificate from the competent authority, is violative of Article 48 of the Constitution and answered the same in negative. The ratio of that decision as contained in paragraphs 17, 18 and 31 is extracted below:

> "It is seen that the Act has been enacted keeping in view the objects and the commands of Article 48 of the Constitution of India and for the purpose of prohibiting slaughter of cow, calves and other milch and draught cattle. From a perusal of Section 5, it would be clear that no person shall slaughter or offer or cause to be offered for slaughter or otherwise intentionally kill or offer or cause to be offered for killing any cow or calf, whether male or female, of a she-buffalo. Therefore, the Act completely prohibits killing of any cow or calf of a she-buffalo subject to the exemption provided under Section 15(b). Under Section 15(b) a cow may be permitted to be slaughtered if it is certified by a Veterinary Officer authorized by the Government to be necessary in the interests of the public health and in the case when the cow is suffering any disease if it is certified by a Veterinary Officer authorized by the Government as being contagious and dangerous to other animals. Under no other circumstances, a cow or calf of a she-

buffalo is permitted to be slaughtered under the provisions of the Act.

Even in regard to the slaughtering of other animals, Section 6 provides that no person shall slaughter or caused to be slaughtered or offer or cause to be offered for slaughter any animal, other than a calf, whether male or female, of a she-buffalo unless he has obtained in respect of such animal a certificate in writing from the competent authority appointed for the area that the animal is fit for slaughter. Sub-Section (2) of Section 6 clearly states that no such certificate shall be granted under sub-section (1) of Section 6 if in the opinion of the competent authority the animal is or is likely to become economical for the purpose of (a) breeding or (b) draught of any kind of agricultural operation or (c) giving milk or bearing offspring. Therefore sufficient safeguard is provide as regards the economical use of the animal before a certificate as required under sub-section (2) of Section 6 is issued by the competent authority for slaughter of the animals. The safeguard provided under sub-section (2) of Section 6 of the Act in regard to the determination of the economical use of the animal by the competent authority appointed for the area before a certificate in writing stating that the animal is fit for slaughter is issued, is in consonance with the object sought to be achieved by the State under Article 48 of the Constitution of India. Therefore, there is no merit in the contention of the counsel for the petitioner that the later part of sub-section (1) of Section 6 is violative of Article 48 of the Constitution of India. There is no conflict between the object of the Act and the later part of Section 6(1) or it is inconsistent or unrelated to the object sought to be achieved. The object underlined under Article 48 would be achieved by the operation of sub-section (2) of Section 6of the Act. Further, as already noticed, under Section 9 the competent authority or

any person authorized by the competent authority has power to enter and inspect any premises where the competent authority or the person authorized has reason to believe that an offence under the Act has been or is likely to be committed.

It cannot be said that the impugned provision section 6(1) of the Act is violative of Article 48 of the Constitution of India. The same is in consonance with the object sought to be achieved by Article 48 of the Constitution of India. The provisions of the Act clearly prohibit slaughtering of cows, calves of cows and calves of she-buffaloes. In view of the decision of the Apex Court in Quareshi's case, sub-section (1) of Section 6 of the impugned Act insofar as it regulates the slaughter of animals other than cow or calf of a cow or calf of a she-buffalo under the certificates granted by the competent authority has to be held constitutionally valid. The contention of the petitioner that the object of Article 48 is to see that no cattle should be slaughtered even if they ceased to be useful or milch or draught has also no merit. In view of the decision of the Apex Court in Quareshi's case explaining the object of Article 48, total prohibition of slaughter is not permissible."

The argument of Smt.Sarathy that the decision in **Sri Ramratan Jhawar's case** (supra) requires reconsideration in view of the judgment of the Larger Bench of the Supreme Court in **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat** (supra) is based on an erroneous understanding of the true ratio of that judgment. The question which came up for consideration before the Larger Bench was whether Section 5 of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994, which contains total prohibition on slaughter of cow and her progeny, was ultra vires to Article 19 (1)(g) of the Constitution. A Full Bench of Gujarat High Court had relied on the

earlier judgments of the Supreme Court in **Mohd. Hanif Quareshi v. State of Bihar** (supra), **Abdul Hakim Quraishi and ors. V. State of Bihar**[4], **Mohammed Faruk v. State of Madhya Pradesh & ors.**[5], **Hajee Usmanbhai Hassanbhai Qureshi and Ors. v. State of Gujarat**[6] and held that the impugned amendment was violative of Article 19 (1)(g) of the Constitution. By a majority of 6 : 1, the Larger Bench over-ruled the earlier Constitution Bench judgments and held that the prohibition contained in Section 5 of the Gujarat Act is intra vires the Constitution. Speaking for majority of the Larger Bench, Hon'ble Chief Justice Shri R.C. Lahoti referred to Articles 48, 48-A and 51-A (g) and observed:

> "Articles 48-A and 51-A have been introduced into the body of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3-1-1977. These Articles were not a part of the Constitution when **Quareshi-I**, **Quraishi-II** and **Mohd. Faruk**'s cases were decided by this Court. Further, Article 48 of the Constitution has also been assigned a higher weightage and wider expanse by theSupreme Court post **Quareshi-I**. Article 48 consists of two parts. The first part enjoins the State to "endeavour or to organize agricultural and animal husbandry" and that too "on modern and scientific lines". The emphasis is not only on 'organization' but also on 'modern and scientific lines". The subject is 'agricultural and animal husbandry'. India is an agriculture based economy. According to 2001 census, 72.2% of the population still lives in villages (See – India Vision 2020, p.99) and survives for its livelihood on agriculture, animal husbandry and related occupations. The second part of Article 48 enjoins the State, de hors the generality of the mandate contained in its first part, to take steps, in particular, "for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle."
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> Article 48-A deals with "environment, forests and wild

life." These three subjects have been dealt with in one Article for the simple reason that the three are inter-related. Protection and improvement is necessary for safeguarding forests and wild life, which in turn protects and improves the environment. Forests and wild life are clearly inter-related and inter-dependent. They protect each other.

Cow progeny excreta is scientifically recognized as a source of rich organic manure. It enables the farmers avoiding the use of chemicals and inorganic manure. This helps in improving the quality of earth and the environment. The impugned enactment enables the State in its endeavour to protect and improve the environment within the meaning of Article 48-A of the Constitution.

By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48-A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48."

The majority thus referred to the earlier judgments in **AIIMS Students' Union v. AIIMS and ors.**[7], **Mohan Kumar Singhania & ors. v. Union of India & ors.**[8], **State of U.P. v. Yamuna Shanker Misra & Ors.**[9], **Rural Litigation and Entitlement Kendra & ors. v. State of Uttar Pradesh & ors.**[10], **T.N. Godavarman Thirumalpad**

v. Union of India & ors.[11], **State of W.B. & Ors. v. Sujit Kumar Rana**[12] and proceeded to observe:

> "It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51-A of the Constitution play a significant role. The decision in **Quareshi-I** in which the relevant provisions of the three impugned legislations was struck down on the singular ground of lack of reasonability, would have decided otherwise if only Article 48 was assigned its full and correct meaning and due weightage was given thereto and Articles 48-A and 51-A (g) were available in the body of the Constitution."

The Supreme Court then considered the meaning of 'milch and draught cattle' appearing in Article 48 and observed:

> "Milch and draught", the two words have been used as adjectives describing and determininig the quality of the noun 'cattle'. The function of a descriptive or qualitative adjective is to describe the shape, colour, size, nature or merits or demerits of the noun which they precede and qualify. In a document like the Constitution, such an adjective cannot be said to have been employed by the framers of the Constitution for the purpose of describing only a passing feature, characteristic or quality of the cattle. The object of using these two adjectives is to enable classification of the noun – 'cattle' which follows. Had it been intended otherwise, the framers of the Constitution would have chosen a different expression or setting of words.
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> No doubt, cow ceases to be 'milch' after attaining a particular age. Yet, cow has been held to be entitled to protection against slaughter without regard to the fact that it has ceased to be 'milch'. This constitutional position is well settled. So is the case with calves. Calves have been held entitled to protection against slaughter without regard to their age and though they are not yet fit to be employed as 'draught

cattle'. Following the same construction of the expression, it can be said that the words "calves and other milch and draught cattle" have also been used as a matter of description of a species and not with regard to age. Thus, 'milch and draught' used as adjectives simply enable the classification or description of cattle by their quality, whether they belong to that species. This classification is with respect to the inherent qualities of the cattle to perform a particular type of function and is not dependant on their remaining functional for those purposes by virtue of the age of the animal. "Milch and draught cattle" is an expression employed in Article 48 of the Constitution so as to distinguish such cattle from other catle which are neither milch nor draught.

Any other meaning assigned to this expression is likely to result in absurdity. A milch cattle goes through a life cycle during which it is sometimes milch and sometimes it becomes dry. This does not mean that as soon as a milch cattle ceases to produce milk, for a short period as a part of its life cycle, it goes out of the purview of Article 48, and can be slaughtered. A draught cattle may lose its utility on account of injury or sickness and may be rendered useless as a draught cattle during that period. This would mean that if a draught cattle ceases to be of utility for a short period on account of sickness or injury, it is excluded from the definition of 'draught cattle' and deprived of the benefit of Article 48.

This reasoning is further strengthened by Article 51-A (g) of the Constitution. The State and every citizen of India must have compassion for living creatures. Compassion, according to Oxford Advanced Learners' Dictionary means "a strong feeling of sympathy for those who are suffering and a desire to help them". According to Chambers 20th Century Dictionary, compassion is "fellow – feeling, or sorrow for the sufferings of another: pity". Compassion is suggestive of sentiments, a soft feeling, and emotions arising out of sympathy, pity and kindness. The concept of compassion for living creatures enshrined in Article 51-A (g) is based on the background of the rich cultural heritage of India – the land of Mahatma Gandhi, Vinoba, Mahaveer, Budha, Nanak and others. No religion or

holy book in any part of the world teaches or encourages cruelty. Indian society is a pluralistic society. It has unity in diversity. The religions, cultures and people may be diverse, yet all speak in one voice that cruelty to any living creature must be curbed and ceased. A cattle which has served human beings is entitled to compassion in its old age when it has ceased to be milch or draught and becomes so-called 'useless'. It will be an act of reprehensible ingratitude to condemn a cattle in its old age as useless and send it to a slaughter house taking away the little time from its natural life that it would have lived, forgetting its service for the major part of its life, for which it had remained milch or draught. We have to remember: the weak and meek need more of protection and compassion.

In our opinion, the expression 'milch or draught cattle' as employed in Article 48 of the Constitution is a description of a classification which by their nature are not milch or draught and the said words do not include milch or draught cattle, which on account of age or disability, cease to be functional for those purposes either temporarily or permanently. The said words take colour from the preceding words "cows or calves". A specie of cattle which is milch or draught for a number of years during its span of life is to be included within the said expression. On ceasing to be milch or draught it cannot be pulled out from the category of "other milch and draught cattle."

In our opinion, the latest judgment, of which the relevant portions have been extracted herein above, cannot be read as laying down a proposition that provisions contained in all statutes premising slaughter of certain types of milch cattle are ultra vires to Articles 48, 48-A and 51-A (g) of the Constitution. What the Larger Bench of the Supreme Court has done is to give a true meaning to the words "milch and draught cattle'. However, that cannot be stretched to mean that the Supreme Court has pronounced in favour of total ban on slaughter of all types of animals.

As an upshot of the above discussion, we hold that the judgment rendered by the Division Bench in **Sri Ramratan Jhawar's case** (supra), does not require re-consideration and Section 6 (1) and (2) of the Act, which permits slaughter of animal under certain contingencies, does not suffer from any constitutional infirmity.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

April 27, 2006

svs/ksld

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[1] **Sri Ramratan Jhawar v. Government of A.P. –** 2002 (3) ALD 804 (DB)
[2] AIR 1958 SC 731
[3] AIR 2006 SC 212
[4] AIR 1968 SC 448
[5] AIR 1970 SC 93
[6] AIR 1986 SC 1213
[7] (2002) 1 SCC 428
[8] 1992 Supp (1) SCC 594
[9] (1997) 4 SCC 7
[10] 1986 (Supp) SCC 517
[11] (2002) 10 SCC 606
[12] (2004) 4 SCC 129